

SENATE BILL NO. 350

INTRODUCED BY K. GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ROUTINE HIV SCREENING AND INCORPORATING THE SCREENING INTO THE PATIENT'S GENERAL INFORMED CONSENT FOR MEDICAL CARE; INCORPORATING PRENATAL SCREENING FOR HIV-RELATED CONDITIONS INTO THE PREGNANT PATIENT'S GENERAL INFORMED CONSENT FOR MEDICAL CARE; PROVIDING FOR LABOR AND DELIVERY HIV SCREENING IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 50-16-702, 50-16-1003, 50-16-1008, 50-16-1009, AND 50-16-1013, MCA; AND REPEALING SECTION 50-16-1007, MCA."

WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Screening and pretest information.** (1) Screening for HIV-related conditions must be considered routine and must be incorporated into the patient's general informed consent for

1 medical care on the same basis as other screening and diagnostic tests.

2 (2) Screening for HIV-related conditions must be voluntary and undertaken with the patient's knowledge
3 and understanding that HIV diagnostic testing is planned.

4 (3) Patients must be informed orally or in writing that HIV diagnostic testing will be performed.

5 (4) If a patient declines an HIV diagnostic test, this decision must be documented in the patient's medical
6 record.

7
8 **NEW SECTION. Section 2. Prenatal HIV screening.** (1) Screening for HIV-related conditions must be
9 considered routine and must be incorporated into the pregnant patient's general informed consent for medical
10 care on the same basis as other routine prenatal screening and diagnostic tests.

11 (2) Screening for HIV-related conditions in pregnant patients must be voluntary and undertaken with the
12 patient's knowledge and understanding that HIV diagnostic testing is planned.

13 (3) Pregnant patients must be informed orally or in writing that HIV diagnostic testing will be performed.

14 (4) If a pregnant patient declines an HIV diagnostic test, this decision must be documented in the
15 patient's medical record.

16 (5) Physicians and other health care providers licensed to provide prenatal care to pregnant women may:

17 (a) offer an HIV diagnostic test in the third trimester to pregnant women who were not tested earlier in
18 the pregnancy; and

19 (b) offer a repeat HIV diagnostic test in the third trimester of pregnancy, preferably before 36 weeks of
20 gestation, to each of their pregnant patients at high risk for acquiring HIV-related conditions.

21
22 **NEW SECTION. Section 3. Labor and delivery HIV screening.** Physicians and other health care
23 providers licensed to provide prenatal care to pregnant women shall, IF MEDICALLY INDICATED:

24 (1) offer a rapid HIV diagnostic test to pregnant women in labor with unknown or undocumented HIV
25 status;

26 (2) offer antiretroviral prophylaxis without waiting for the results of the confirmatory test if a rapid HIV
27 diagnostic test or a standard HIV diagnostic test is positive.

28
29 **Section 4.** Section 50-16-702, MCA, is amended to read:

30 **"50-16-702. Notification of exposure to infectious disease -- report of exposure to disease.** (1) (a)

1 If an emergency services provider acting in an official capacity attends a patient prior to or during transport or
2 assists in transporting a patient to a health care facility and the emergency services provider has had an
3 exposure, the emergency services provider may request the designated officer to submit the form required by
4 department rule to the health care facility on the emergency services provider's behalf. The form must be provided
5 for in rules adopted by the department and must include the emergency services provider's name and other
6 information required by the department, including a description of the exposure. The designated officer shall
7 submit the completed form to the health care facility receiving the patient as soon as possible after the request
8 for submission by the emergency services provider. Submission of the form to the health care facility is an
9 indication that the emergency services provider was exposed and a verification that the designated officer and
10 the emergency services provider believe that the emergency services provider was exposed.

11 (b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as
12 defined in 50-16-1003, by a mode of transmission recognized by the U.S. department of health and human
13 services, centers for disease control and prevention, then submission of the form to the health care facility
14 constitutes a request to the patient's physician to ~~seek consent for performance of~~ perform an ~~HIV-related~~ HIV
15 diagnostic test pursuant to ~~50-16-1007(10)~~ [section 1].

16 (c) Upon receipt of the report of exposure from a designated officer, the health care facility shall notify
17 the designated officer in writing whether or not a determination has been made that the patient has or does not
18 have an infectious disease. If a determination has been made and the patient has been found:

19 (i) to have an infectious disease, the information required by 50-16-703 must be provided by the health
20 care facility;

21 (ii) to not have an infectious disease, the date on which the patient was transported to the health care
22 facility must be provided by the health care facility.

23 (2) If a health care facility receiving a patient determines that the patient has an airborne infectious
24 disease, the health care facility shall, within 48 hours after the determination was made, notify the designated
25 officer and the department of that fact. The notice to the department must include the name of the emergency
26 services organization that transported the patient to the health care facility. The department shall, within 24 hours
27 after receiving the notice, notify the designated officer of the emergency services provider who transported the
28 patient.

29 (3) A designated officer who receives the notification from a health care facility required by 50-16-703(2)
30 or by subsection (1)(c) of this section shall immediately provide the information contained in the notification to

1 the emergency services provider for whom the report of exposure was filed or who was exposed to a patient with
2 an airborne infectious disease."

3
4 **Section 5.** Section 50-16-1003, MCA, is amended to read:

5 **"50-16-1003. Definitions.** As used in this part, the following definitions apply:

6 (1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in
7 accordance with standards promulgated by the U.S. department of health and human services, centers for
8 disease control of the United States public health service and prevention.

9 (2) "Antiretroviral prophylaxis" means a specific drug regime preventing mother-to-child transmission of
10 HIV infections.

11 ~~(2)(3)~~ "Contact" means a person who has been exposed to the test subject in a manner, voluntary or
12 involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the U.S.
13 department of health and human services, centers for disease control of the United States public health service
14 and prevention.

15 ~~(3)(4)~~ "Department" means the department of public health and human services provided for in
16 2-15-2201.

17 ~~(4)(5)~~ "Health care facility" means a health care institution, private or public, including but not limited to
18 a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

19 ~~(5)(6)~~ "Health care provider" means a person who is licensed, certified, or otherwise authorized by the
20 laws of this state or who is licensed, certified, or otherwise authorized by the laws of another state to provide
21 health care in the ordinary course of business or practice of a profession. The term does not include a person
22 who provides health care solely through the sale or dispensing of drugs or medical devices.

23 ~~(6)(7)~~ "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and
24 all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems
25 and leave the infected person immunodeficient or neurologically impaired.

26 ~~(7)(8)~~ "HIV-related condition" means a chronic disease resulting from infection with HIV, including but
27 not limited to AIDS and asymptomatic seropositivity for HIV.

28 ~~(8)(9)~~ ~~"HIV-related "~~"HIV diagnostic test" means a test approved by the federal food and drug
29 administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect
30 the presence of HIV or antibodies to HIV.

~~(9) "Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling.~~

~~(10) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.~~

~~(11)~~ (10) "Local board" means a county, city, city-county, or district board of health.

~~(12) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.~~

~~(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.~~

~~(14)~~ (11) "Person" means an individual, corporation, organization, or other legal entity.

~~(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.~~

~~(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.~~

(12) "Rapid HIV diagnostic test" means a federally approved test designed to assist in time-sensitive diagnosis of HIV infections.

~~(17) "Release of test results" means a written authorization for disclosure of HIV-related test results that:~~
~~—— (a) is signed and dated by the person tested or the person authorized to act for the person tested; and~~
~~—— (b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.~~

~~(18) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual."~~

Section 6. Section 50-16-1008, MCA, is amended to read:

"50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty. (1) Prior to donation of an organ, semen, or tissues, ~~HIV-related~~ HIV diagnostic testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an

~~HIV-related~~ HIV diagnostic test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to \$1,000 or imprisonment of up to 6 months, or both."

Section 7. Section 50-16-1009, MCA, is amended to read:

"50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure. (1) A person may not disclose or be compelled to disclose the identity of a subject of an ~~HIV-related~~ HIV diagnostic test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.

(2) If a health care provider informs the subject of an ~~HIV-related~~ HIV diagnostic test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(3) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for 1 year, or both."

Section 8. Section 50-16-1013, MCA, is amended to read:

"50-16-1013. Civil remedy. (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of \$5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of \$20,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

1 (3) The department may maintain a civil action to enforce this part in which the court may order any relief
2 permitted under subsection (1).

3 (4) Nothing in this section limits the rights of a subject of an ~~HIV-related~~ HIV diagnostic test to recover
4 damages or other relief under any other applicable law or cause of action.

5 (5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of
6 an ~~HIV-related~~ HIV diagnostic test result in accordance with any reporting requirement for a diagnosed case of
7 AIDS or an HIV-related condition by the department or the U.S. department of health and human services, centers
8 for disease control ~~of the United States public health service~~ and prevention."

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10 NEW SECTION. **Section 9. Repealer.** Section 50-16-1007, MCA, is repealed.

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12 NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 3] are intended to be
13 codified as an integral part of Title 50, chapter 16, part 10, and the provisions of Title 50, chapter 16, part 10,
14 apply to [sections 1 through 3].

15 - END -